

Keen, Shelley

From: Maiani, Necia M [nanderson@welchcomer.com]
Sent: Thursday, January 08, 2004 5:18 PM
To: 'Keen, Shelley'
Subject: RE: Transfer 70394

Hi Shelley:

We are going to make one last big effort at proving rights 95-4027 and 95-7107 are NKWD's and that 95-4027 was put into beneficial use before March 1963. Can you please hold onto the transfer for 1 more week, while we do this research? Thanks for your help!

Necia

-----Original Message-----

From: Keen, Shelley [mailto:SKEEN@idwr.state.id.us]
Sent: Thursday, January 08, 2004 2:25 PM
To: 'Maiani, Necia M'
Subject: RE: Transfer 70394

Necia,

For rights licensed 95-7107 and 95-2144, you can transfer them if you can show that they are owned by NKWD and that they have not been forfeited through non-use. Because 95-4027 and 95-4299 are statutory claims, you would have to show that the water uses were established prior to the mandatory permit requirement and the amount of use as well as ownership and continued use. The statutes regarding transfers and forfeiture are Section 42-222 and 42-223, Idaho Code. They can be accessed at the following link. <http://www3.state.id.us/idstat/TOC/42FTOC.html> You can find more information about the requirements for water right transfers if you go to <http://www.idwr.state.id.us/water/rights/default.htm> and click on the link to Eastern Snake Plain Aquifer (ESPA) Transfer Policies, which are being implemented statewide. The part that will probably be most interesting to you begins on page 15 and goes through page 28.

I think the kind of affidavit you are describing would help to demonstrate that licensed right 95-2144 has not been forfeited, and it would also help to establish that statutory claim 95-4027 was established before the mandatory permit requirement. Your challenge would still be to document the quantity of water appropriated under 95-4027 in 1936.

Shelley Keen
Water Right Permits Section
Idaho Dept. of Water Resources
208-327-7946
skeen@idwr.state.id.us

-----Original Message-----

From: Maiani, Necia M [mailto:nanderson@welchcomer.com]
Sent: Thursday, January 08, 2004 12:05 PM
To: 'Keen, Shelley'
Subject: RE: Transfer 70394

Hi Shelley,

I have a couple more questions:

If we submit an application for new water rights to cover the amounts in

rights 95-4027 and 95-7107, but later find a way to prove that 95-4027, 95-7107, 95-4299, and 95-2144 are legitimate and are owned by NKWD---will we still be able to apply to transfer these rights at a later date? Is there a State rule, regulation, etc., that would address this situation?

Also, if one of the homeowners in the Mt. View subdivision (rights 95-4027 and 95-2144) could prove that they had been living there since 1936 and gave us a statement that they had been served off of the water system since then or at that time, would this suffice as proof of beneficial use for these claims?

Thanks for your help!
Necia Maiani

-----Original Message-----

From: Keen, Shelley [mailto:SKEEN@idwr.state.id.us]
Sent: Wednesday, December 31, 2003 3:17 PM
To: Maiani, Necia M
Subject: RE: Transfer 70394

Necia,

Sorry for taking so long to reply. I recommend filing another transfer application if you need to transfer Claim 95-4299. If you were to modify Transfer 70934, we'd have to collect another fee and re-advertise the application in the newspaper, which could expose you to protests once again. Because 95-4299 is a claim, not a decreed or licensed right, you would be required to provide evidence substantiating the priority date, the quantity, etc. I looked in the water right file to see if the original claimant provided any evidence, but there isn't any. Even if you do not apply to transfer Claim 95-4299, we'll still need an ownership change notice if McGuires Domestic Water Association is out of the picture.

I also looked in the water right file for licensed right 95-2144. The field examiner's map, dated 1969, supports your conclusion that the well is very close to the 1/4 1/4 line. To transfer this right, you would have to demonstrate ownership of the right and also demonstrate that the right has not been forfeited through non-use.

Thanks for the update, and please let me know if you need any more information.

Shelley Keen
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Idaho Dept. of Water Resources
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skeen@idwr.state.id.us

-----Original Message-----

From: Maiani, Necia M [mailto:nanderson@welchcomer.com]
Sent: Tuesday, December 30, 2003 4:48 PM
To: 'Keen, Shelley'
Cc: 'bhaynes@idwr.state.id.us'
Subject: RE: Transfer 70394

Water right 95-4107: We checked records with Washington Water Power, they did not have anything prior to 1965. Thus, we will not be able to use this right. However, as I was looking over the file I noticed another water right for the second well on this system. The well was drilled in 1936. The water right is in the form of a claim 95-4299. I suppose if we want to

utilize this right we will have to file a separate transfer for it, or can we amend transfer 70934? If this is a claim with a priority date prior to March 1963, will we still have to try to prove it was in use before then?

I also found another water right: 95-2144. This right is for a well located in the NENE of Section 6 52N 4W. The well I think it belongs to is a well we located at SENE of Section 6 52N 4W. This well is so close to the 1/4 1/4 section it could be described either way. There are no other wells of this size located in this vicinity that this right could belong to. Would it be worth filing a transfer on this right, as well--what would be involved?

I have gathered the proof of use records for the other water rights we intend to transfer and will send this information out as soon as possible.

If it is not feasible to transfer these two newest rights, we intend to file an application for new water right for the appropriate amount.

-----Original Message-----

From: Keen, Shelley [mailto:SKEEN@idwr.state.id.us]
Sent: Tuesday, December 30, 2003 8:39 AM
To: 'Maiani, Necia M'
Subject: RE: Transfer 70394

Necia:

Forfeiture requires that the water right go unused for a period of five consecutive years. Therefore, it is sufficient to document that the rights were used at any time during the prior five-year period. Records from 2000 through 2003 should be just fine for that purpose. Providing data from 1995 and from 2000 would show that there has been no recent five-year period of non-use.

Shelley Keen
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-----Original Message-----

From: Maiani, Necia M [mailto:nanderson@welchcomer.com]
Sent: Tuesday, December 30, 2003 9:30 AM
To: 'skeen@idwr.state.id.us'
Subject: Transfer 70394

Shelley:

I am completing our response to your letter dated December 9, regarding NKWD's transfer 70394. I had a question regarding the proof of use within the last 5 years. Although, all wells in question have been in continuous use through the last 5 years, I am not sure that the District has a good record of proof for the years 1998 and 1999. Will the records for 2000 through 2003 be sufficient? We also have records from 1992 through 1995 if that will help?

Thanks,
Necia Maiani, EIT
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